

2001

Draper City v. Matthew I. Barlow : Brief of Appellant

Utah Court of Appeals

Follow this and additional works at: https://digitalcommons.law.byu.edu/byu_ca2



Part of the [Law Commons](#)

Original Brief Submitted to the Utah Court of Appeals; digitized by the Howard W. Hunter Law Library, J. Reuben Clark Law School, Brigham Young University, Provo, Utah; machine-generated OCR, may contain errors.

Matthew I. Barlow; Appellant, Pro Se.

Buzz Cutler; Attorney for City of Draper; Attorney for Appellee.

Recommended Citation

Brief of Appellant, *Draper City v. Matthew I. Barlow*, No. 20010426 (Utah Court of Appeals, 2001).
https://digitalcommons.law.byu.edu/byu_ca2/3323

This Brief of Appellant is brought to you for free and open access by BYU Law Digital Commons. It has been accepted for inclusion in Utah Court of Appeals Briefs by an authorized administrator of BYU Law Digital Commons. Policies regarding these Utah briefs are available at http://digitalcommons.law.byu.edu/utah_court_briefs/policies.html. Please contact the Repository Manager at hunterlawlibrary@byu.edu with questions or feedback.

IN THE UTAH COURT OF APPEALS

DRAPER CITY,
Plaintiff / Appellee,

V

MATTHEW I. BARLOW,
Defendant / Appellant,

CASE NO. 20010426-CA
(Priority No. 2)
(Oral Argument Requested)

BRIEF OF APPELLANT

Appeal from a judgement of conviction for failure to stop at stop sign, a class C misdemeanor, in violation of Utah Code Annotated 41-6-72.10, in the Third District Court, County of Salt Lake, State of Utah, before the Honorable Judge Denise P. Lindberg.

BUZZ CUTLER
Attorney for City of Draper
1415 East Skyview Drive
Salt Lake City, Utah 84124
Attorney for Appellee

MATTHEW I. BARLOW
12624 South Whisper Brook Bay
Draper, Utah 84020
Appellant, Pro Se

FILED
Utah Court of Appeals
OCT 16 2001
Paulette Stagg
Clerk of the Court

TABLE OF CONTENTS

	<u>Page</u>
TABLE OF AUTHORITIES.....	3
JURISDICTIONAL STATEMENT.....	5
ISSUES, STANDARD OF REVIEW.....	5
STATEMENT OF CASE.....	6
STATEMENT OF THE FACTS.....	7
ARGUMENT.....	7
POINT I.....	7
POINT II.....	8
POINT III.....	10
CONCLUSION.....	11
ADDENDUM - A.....	12
ADDENDUM - B.....	13

IN THE UTAH COURT OF APPEALS	
DRAPER CITY, Plaintiff / Appellee,	!
V	!
MATTHEW I. BARLOW, Defendant / Appellant,	!
	CASE NO. 20010426-CA (Priority No. 2) (Oral Argument Requested)

Appeal from a judgement of conviction for failure to stop at stop sign, a class C misdemeanor, in violation of Utah Code Annotated 41-6-72.10, in the Third District Court, County of Salt Lake, State of Utah, before the Honorable Judge Denise P. Lindberg.

MATTHEW I. BARLOW
12624 South Whisper Brook Bay
Draper, Utah 84020
Appellant, Pro Se

TABLE OF CONTENTS

	<u>Page</u>
TABLE OF AUTHORITIES.....	3
JURISDICTIONAL STATEMENT.....	5
ISSUES, STANDARD OF REVIEW.....	5
STATEMENT OF CASE.....	6
STATEMENT OF THE FACTS.....	7
ARGUMENT.....	7
POINT I.....	7
POINT II.....	8
POINT III.....	10
CONCLUSION.....	11
ADDENDUM - A.....	12
ADDENDUM - B.....	13

TABLE OF AUTHORITIES

	<u>Page</u>
<u>CASES</u>	
<u>State v Pena, 869 P.2d 932 (Utah 1994)</u>	5,6
<u>State v Thurman, 846 P.2d 1256, 1271 (Utah 1993)</u>	5,6
<u>State v Jameson 134 P.2d 173 (Utah 1943)</u>	8
<u>State v Topham 123 P.2d 888 (Utah 1912)</u>	8
<u>State v Gardner 789 P.2d 273 (Utah 1989)</u>	11
<u>State v Neeley 748 P.2d 1091 (Utah 1988)</u>	10
<u>State v Jones 581 P.2d 141 (Utah 1978)</u>	8
<u>State v Bryan 709 P.2d 257 (Utah 1985)</u>	10
<u>State v Twitchell 333 P.2d 1075 (Utah 1959)</u>	9
<u>STATUTES</u>	
Utah Code Annotated 78-2a-3(2)(e).....	5
Utah Code Annotated 77-1-6(f).....	9
Utah Code Annotated 41-6-72.10.....	1,6
<u>RULES</u>	
Utah Rules of Civil Procedure Rule 63(b).....	11
Utah Rules of Criminal Procedure Rule 4(e).....	8
Utah Rules of Criminal Procedure Rule 17(d).....	9
Utah Rules of Criminal Procedure Rule 29 (c)(1)(a).....	11

CONSTITUTIONAL PROVISIONS

U.S. Constitution Amendment XIV Section 1.....9

Utah Constitution Article I Section 12.....7,9

Utah Constitution Article V Section 1.....9

IN THE UTAH COURT OF APPEALS

DRAPER CITY,
Plaintiff / Appellee,

V

MATTHEW I. BARLOW,
Defendant / Appellant,

!
!
!
!
!
!
!
!

CASE NO. 20010426-CA
(Priority No. 2)
(Oral Argument Requested)

JURISDICTIONAL STATEMENT

This Court has jurisdiction pursuant to Utah Code Annotated 78-2a-3(2)(e). Appellant / Defendant Matthew I. Barlow was convicted of failure to stop at stop sign, a class C misdemeanor. A copy of the judgement is in Addendum A.

ISSUES, STANDARD OF REVIEW

1. Whether the information apprized the defendant with certainty what is intended or expected to be proved and what he is required to defend.

STANDARD OF REVIEW Thus calling on this Court to review the court below for “correction of error”.see State v Pena, 869 P.2d 932 (Utah 1994); State v Thurman, 846 P.2d 1256, 1271 (Utah 1993).

2. Whether the prosecution has the legislative authority to change the punishment affixed to a criminal statute and thus denying the defendant his due process right to trial by jury.

STANDARD OF REVIEW Thus calling on this Court to review the court below for “correction of error”. see State v Pena, 869 P.2d 932 (Utah 1994); State v Thurman, 846 P.2d

1256, 1271 (Utah 1993).

3. Whether it was prejudicial error for the trial court judge failing to recuse herself where there is a colorable claim of bias and prejudice.

STANDARD OF REVIEW Thus calling on this Court to review the court below for “correction of error” see State v Pena, 869 P.2d 932 (Utah 1994); State v Thurman, 846 P.2d 1256, 1271 (Utah 1993).

STATEMENT OF THE CASE

On May 5th, 2000, the appellant received a citation for failure to stop at stop sign. On June 6th, 2000 an Information was filed charging the defendant in violation of Utah Code Ann. 41-6-72.10. The appellant filed a motion for a bill of particulars to further describe the vagueness and ambiguity of the statute the appellant is being charged with, also the appellant filed a motion for discovery requesting the officer’s policies and procedures manual. At a hearing held on December 18th, 2000, before Judge Denise Lindberg, both motions were denied.

The appellant filed a motion for trial by jury, with this being the appellant’s intention to have a jury trial, the trial court allowed the prosecution to change the statutorily fixed punishment of the crime, from a class c misdemeanor to an infraction, for the sole purpose of denying the appellant his right to trial by jury. At the close of the pretrial conference Judge Lindberg stated she would not afford the appellant the same leniency as was given to the prosecution for being over three hours late to the pretrial conference hearing. The appellant filed a motion to recuse Judge Lindberg for bias and prejudice. Judge Lindberg refused to disqualify herself from sitting on the case and denied the appellant’s motion to recuse for bias and prejudice on January 18th, 2001 but did not inform the appellant of this denial until the day of

trial which was held on March 13th, 2001, when she handed the appellant with a hand written order denying the motion. (See Addendum B) After trial had commenced and after the prosecution rested its case (Trial Pg. 21 Ln. 14), Judge Lindberg reopened the case and brought forth the prosecution's witness back upon the witness stand and conducted further questioning prior to Judge Lindberg's verdict. (Trial Pg. 21 Ln. 20-25, Pg. 22 Ln. 1-17) This further questioning was done because the prosecution failed to prove beyond a reasonable doubt as to the guilt of the appellant at trial.

STATEMENT OF THE FACTS

On May 5th, 2000 Salt Lake County Deputy Andrus was sitting in his vehicle, which was parked in the parking lot on the west entrance of the Pinnacle Reserve Apartments located at approximately 150 East and 13400 South, observing the intersection. At which time, noticed a Ford proceeding south towards the intersection where, for a small period, Officer Andrus cannot observe southbound traffic because of some pine trees and a cement wall. (see Trial Pg. 7 Ln 23-25, Pg. 8 Ln 1, 21-24) He then notices the Ford turning and proceeding east on 13400 South. Officer Andrus then proceeds east on 13400 South and stops the Ford and then issues the defendant a citation for failure to stop at stop sign.

ARGUMENT

POINT I

CRIMINAL DEFENDANT HAS RIGHT TO NATURE AND CAUSE OF

ACCUSATION AGAINST HIM

In criminal prosecutions the defendant has the right to demand the nature and cause of

the accusation against him and to have a copy thereof, pursuant to Article I Section 12 of the Utah Constitution. The prosecution filed an information on June 13th, the information was fatally defective and legally insufficient by not stating the essential facts of the crime. The information stated the language of the statute, which included in the sub-paragraph, five different circumstances, and does not apprise the defendant of the specific acts of which he is accused. In State v Topham 123 P. 888 (Utah 1912), the court held that an information must apprise defendant with reasonable certainty what is intended or expected to be proved and what he is required to meet and defend. The defendant filed a motion for a bill of particulars on June 19th, pursuant to Utah Rules of Criminal Procedure Rule 4(e)¹ The record reflects that the defendant filed the motion six (6) days after arraignment pursuant to the above stated rule. In State v Jameson, 134 P.2d 173 (Utah 1943), the court held that the purpose of a bill of particulars is to inform the defendant of the particulars of the offense sufficiently to enable him to prepare his defense, thus when the trial court denied the appellant's motion for a bill of particulars, it was in violation of the appellant's constitutional due process right.

POINT II

PROSECUTION DOES NOT HAVE THE LEGISLATIVE AUTHORITY TO PRESCRIBE

PENALTIES FOR THE COMMISSION OF A CRIME

In State v Jones 581 P.2d 141 (Utah 1978), the court held that it is the prerogative of the

¹Utah Rules of Criminal Procedure rule 4 states : When facts not set out in an information or indictment are required to inform a defendant of the nature and cause of the offense charged, so as to enable him to prepare his defense, the defendant may file a written motion for a bill of particulars. The motion shall be filed at arraignment or within ten days thereafter, or at such later time as the court may permit.

Legislature to prescribe what shall be penalties and burdens for commission of a crime, as well for any amelioration thereof. The trial court erred by stating that the prosecution has a right to charge an offense within a range of an infraction to a class B misdemeanor. (See Pretrial Conference Pg 3 Ln 3,4,11,12). The prosecution is the Executive branch of the government and does not have the authority to change the language and intent of a Utah statute. Article V Section I of the Utah Constitution states :

The powers of the government of the State of Utah shall be divided into three distinct departments, the Legislative, the Executive, and the Judicial; and no person charged with the exercise of powers properly belonging to one of these departments, shall exercise any functions appertaining to either of the others.

If the prosecution was allowed the freedom to change the penalty and not conform to the express provisions of that statute, that would allow a form of arbitrariness that is foreign to our system of law. Furthermore, to allow the prosecution to choose between a misdemeanor or an infraction would deny defendant's equal protection of the laws, thus violating the Fourteenth Amendment of the U.S. Constitution Section I ². Equal protection of the laws guarantees like treatment of all those who are similarly situated. Neither the trial court nor the prosecutor can change the legislative intent with respect to the penalties embodied in the statute at issue. The court's responsibility is to assure the rational and evenhanded application of criminal laws. In State v. Twitchell 333 P.2d 1075 (Utah 1959), the court held that the prosecutor shall not have the freedom to choose between charging either a misdemeanor or an infraction for the same crime. This situation would therefore deny defendant and others in his class equal protection of the

² No State shall deny to any person within its jurisdiction the equal protection of the laws.

laws. Clearly legislation made the penalty for Utah Code Ann. 41-6-72.10 (see addendum B) a class C misdemeanor, and did not allow the prosecution to change it to an infraction. Also see State v Bryan 709 P.2d 257 (Utah 1985).

Furthermore the court allowed the prosecution to change the penalty of the crime for the sole purpose of depriving the appellant's of his due process rights of trial by jury. The crime the appellant is being charged with is a class C misdemeanor and is guaranteed this right to trial by jury by rule (Utah Rules of Criminal Procedure rule 17(d)) and pursuant to Utah Code Ann. 77-1-6(f), and Utah Constitution Article I Section 12.

POINT III

THE DEFENDANT'S SUBSTANTIAL RIGHTS HAVE BEEN ADVERSELY AFFECTED WHEN JUDGE LINDBERG FAILED RECUSE HERSELF TO CONTINUE TO ADJUDICATE MATTER AFTER MOTION TO RECUSE FOR BIAS AND PREJUDICE

On January 7th, 2001, the defendant filed a motion to recuse Judge Denise Lindberg from sitting on any matter involving the defendant pursuant to Utah Rules of Criminal Procedure rule 29(c)(1)(A). Utah's rules with regard to recusal or disqualification include the terms "the appearance of bias" which means the defendant's facts are to be taken as true. In State v Neely 748 P.2d 1091 (Utah 1988) the court held that "a judge should recuse himself where there is a colorable claim of bias or prejudices". Judge Lindberg further confirmed her bias position towards the defendant by :

- A.** By denying the defendant's motion to recuse Judge Lindberg (Trial Pg. 3 Ln. 9-11).
- B.** By active prosecution and practicing law from the bench by reopening the

City's case and commencing direct examination on the City's witness (Trial Pg. 21 Ln. 20-25, Pg. 22 Ln. 1-17), after the City rested its case (Trial Pg. 21 Ln. 14).

C. By denying the defendant's motion for arrest of judgement prior to it being submitted. (Trial Pg. 25 Ln. 18-25)

D. By further stating to the defendant that the defendant had no basis and no right to appeal her verdict in the case. (Trial Pg. 25 Ln. 20-25)

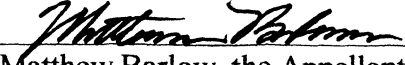
To the most reasonable person Judge Lindberg's actions would confirm bias against the defendant and destroy any public confidence in the Judicial System. Because of Judge Lindberg's bias against the defendant and her inability to remain neutral and impartial, Rule 29(c) of Utah Rules of Criminal Procedure and Rule 63(b) of Utah Rules of Civil Procedure apply and Judge Lindberg should have recused herself. By the fact that Judge Lindberg failed to recuse herself, the substantial rights of the Defendant have been adversely affected. (See State v. Gardner 789 P.2d 273 (Utah 1989))

CONCLUSION

Therefore defendant / appellant respectfully requests that this Court reverse the trial court's order denying the appellant a trial by jury, reverse the trial court's order and disqualify Judge Lindberg from sitting in on any matter concerning the appellant, reverse his conviction and remand the case to the trial court for a new trial.

Respectfully Submitted

Dated this 15th day of October, 2001


Matthew Barlow, the Appellant.

INNER-OFFICE REQUEST FOR RULING ON

Defendants ^{to} MOTION FOR Disqualify J. LindbergCASE # 005-400101 GRANTED [←] DENIED SET FOR ORAL ARGUMENT
ON L&M CALENDARNOTE: The motion is denied
on two grounds:(1) The allegations madeDATE: 1/19/01JUDGE: RunNOTIFIED DATE BY: INITIAL

→ in the motion are
legally insufficient
and do not establish bias
on the part of the
assigned judge;

(2) The defendant has
not made the
allegations in an
affidavit as required by
Rule 63, nor has a
certificate of good
faith been attached.

FILED
THIRD DISTRICT COURT
SANDY DEPT.

1-19-01

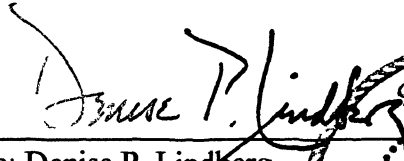
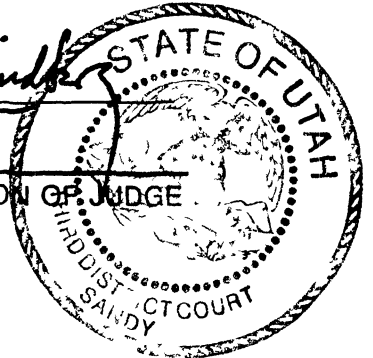
IN THE THIRD JUDICIAL DISTRICT COURT, SANDY DEPARTMENT
IN AND FOR SALT LAKE COUNTY, STATE OF UTAH

City of Draper	:	MINUTE ENTRY RULING & ORDER
Plaintiff(s),	:	CASE NO. 005400101
vs.	:	Judge Denise P. Lindberg
Matthew I. Barlow	:	Date: April 30, 2001
Defendant (s),	:	

Motion for a new trial and/or arresting judgment and sentence are denied. contrary to defendant's assertions, when motion to recuse judge was filed, it was certified to the associate presiding judge for the Third District Court, consistent with requirements of Utah Rule Criminal Procedure 29. Judge Reese initially faxed back a handwritten order in which he found two grounds for denying defendant's motion. The handwritten notation was then prepared as a minute entry which Judge Reese reviewed and signed. Trial was held consistent with requirements of due process and the court found defendant guilty beyond reasonable doubt. Pursuant to Utah Rule Criminal Procedure 24, defendant then had 10 days to file the present motion.

Defendant's motion, filed fully 40 days after trial is untimely. Moreover,

after review of motion and memorandum in support, consistent with Utah Rule Criminal Procedure 23, court finds no good cause to arrest judgment. Court also notes for the record that defendant has failed to comply with Court's Order to pay the \$60.00 fine by April 27, 2001. Order to Show Cause to issue why defendant should be found in contempt of court.


Judge: Denise P. Lindberg

ENTERED AT DIRECTION OF JUDGE